



CALIFORNIA FARM BUREAU FEDERATION

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January 21, 2019

Chairman Jean-Pierre Wolff
Central Coast Regional Water Quality Board
895 Aerovista Place, Ste. 101
San Luis, Obispo, CA 93401-7906

RE: Comments to Ag Order 4.0 Options Tables

Dear Chairman Jean-Pierre Wolff and Members of the Board:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing nearly 36,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau, on behalf of Monterey County Farm Bureau, San Benito County Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara County Farm Bureau, Santa Clara County Farm Bureau, and Santa Cruz County Farm Bureau, appreciates the opportunity to provide comments on tables and questions within the Notice of Public Comment for Ag Order 4.0 Conceptual Regulatory Requirement Options (“Notice”). Farm Bureau, in conjunction with various agricultural entities (“Agricultural Coalition”), submitted detailed legal comments on January 21, 2019 in response to the conceptual framework tables and associated regulatory requirements within the Notice as well as the November 8-9, 2018 staff report. In addition to those comments, which Farm Bureau incorporates herein by reference, Farm Bureau offers the following concerns and comments regarding the scope and content of the environmental analysis and environmental documentation for the forthcoming Ag Order 4.0. Although Farm Bureau recognizes the conceptual nature of the Conceptual Regulatory Requirement Options Tables and the discussion and questions included in the Notice, Farm Bureau is concerned with the direction of the development of Ag Order 4.0 and its compliance with the California Environmental Quality Act (“CEQA”).

CEQA, Pub. Resources Code, §§ 21000 et seq., was enacted to address concerns about environmental quality in the state of California. CEQA establishes processes and procedures to ensure that California agencies complete an environmental analysis and consider and disclose to the public the environmental impacts of a proposed project. (Pub. Resources Code, §§ 21000 et seq.; Cal. Code Regs., tit. 14, § 15000 et seq.) CEQA's statutory framework clearly sets forth a series of analytical steps intended to promote the fundamental goals and purposes of environmental review—information, public participation, mitigation, and governmental agency accountability. (Cal. Code Regs., tit. 14, § 15002; see also Pub. Resources Code, §§ 21001, 21001.1, 21002, 21003, 21006, 21064.) CEQA's intent and purpose foster informed public participation and decision-making. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404.) As the lead agency for the project, Ag Order 4.0, the Central Coast Water Board must comply with CEQA's overall objectives, which are to: 1) inform the decision-makers and public about the potential significant environmental effects of a proposed project; 2) identify ways that environmental damage may be mitigated; 3) prevent significant, avoidable damage to the environment by requiring changes in projects, through the use of alternative or mitigation measures when feasible; and 4) disclose to the public why an agency approved a project if significant effects are involved. (Cal. Code Regs., tit. 14, § 15002(a).)

Agriculture is Part of the Environment

As stated above, CEQA, is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. On page 3 of the Notice, the Central Coast Water Board asks the following question: “Are there any alternatives to the options tables? If yes, how might these alternatives lessen *environmental impacts*?” (Notice, p. 3, emphasis added.) In order for the formulation of a proper range of feasible alternatives as well as environmental analysis of those alternatives, Farm Bureau requests that the Water Board properly interpret the term “environment.” Pursuant to CEQA, the physical environment includes agricultural lands and resources. (CEQA Guidelines Appendix G, section II, Agriculture and Forestry Resources; Pub. Resources Code, § 21060.5. [“‘Environment’ means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.”].) Given the national and statewide importance of agriculture and the legal requirements of environmental review, Farm Bureau urges the Central Coast Water Board to properly interpret the questions in the Notice to include agriculture within the term “environment” and thus, assess all direct, indirect, and cumulative effects on the agricultural environment resulting from the proposed project alternatives in its environmental analysis.¹

¹ Any and all adverse environmental effects on agricultural resources resulting from the project, as well as cumulative impacts that will occur over time, must be fully assessed and disclosed under CEQA, as well as avoided or mitigated as required by CEQA.

Adequate Project Objectives

CEQA requires that an EIR contain a “statement of the objectives sought by the proposed project.” (Cal. Code Regs., tit. 14, § 15124(b).) Under CEQA, “[a] clearly written statement of objectives will help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding consideration. The state of objectives should include the underlying fundamental purpose of the project.” (*Ibid.*)

When overly broad, objectives cannot help focus alternatives. When objectives are defined too narrowly, an EIR’s treatment of alternatives may be inadequate, because narrow objectives unreasonably limit alternatives analyses. The Notice contains “the purpose of Ag Order 4.0” under the “Project Objectives” heading of the Notice. (Notice, p. 2.) Farm Bureau cautions against defining the project objectives too narrowly to prevent a proper review of feasible project alternatives.

Reasonable Range of Alternatives

The Central Coast Water Board must consider a reasonable range of alternatives within its environmental impact report (“EIR”). CEQA Guidelines section 15126.6(a) states that an EIR must describe and evaluate a reasonable range of alternatives to the proposed project that would *feasibly attain most* of the project’s basic objectives. (Cal. Code Regs., tit. 14, § 15126.6(a).) The EIR must evaluate the comparative merits of the alternatives and include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. (Cal. Code Regs., tit. 14, § 15126.6(c).) The purpose of this analysis is to determine whether there is a feasible way to achieve most of the basic objectives of the project, while avoiding or substantially lessening any of the project’s significant effects. (Pub. Resources Code, § 21002.1.) A proper reasonable range of feasible alternatives is needed within an EIR to “foster informed decision making and public participation.” (CEQA Guidelines, § 15126.6(a).)

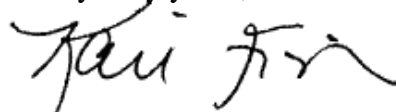
In other words, an EIR must evaluate a reasonable range of feasible alternatives; alternatives are evaluated for their ability to attain most of the basic objectives of the program. Under CEQA, “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Pub. Resources Code, § 21061.1; Cal. Code Regs., tit. 14, § 15364.) Thus, the Central Coast Water Board’s alternatives analysis is confined by reasonableness and feasibility.

Although the Requirement Options Tables in Attachment 1 are not yet full-fledged “alternatives” for the EIR, as an EIR has yet to be developed, the Requirement Options Tables do “convey a range of regulatory requirements addressing each of these five water quality issues that could be included in Ag Order 4.0 relative to the existing Ag Order 3.0 requirements” and are forming the basis for the alternatives that will be included in the EIR. (Notice, p. 1.) Specifically, within the Requirement Options Tables,

three “options” are provided. However, in actuality, the options proposed do not represent a range of options. Rather, the options consist of maintaining the status quo in the form of Ag Order 3.0 (option Ag Order 3.0), which staff has already indicated will not be chosen as the project, and two other options (Option 1 and Option 2) that are essentially mirror images of each other apart from differing time schedules, limits, and prioritization/phasing or lack thereof. The fundamental and foundational regulatory requirements for Option 1 and Option 2 are the same given that no alternative means of compliance is proposed between the two options, no alternative means of water quality monitoring is proposed, no alternative means of qualifiable milestones are proposed, no alternatives to numeric limits (especially since the Nonpoint Source Policy does not require numeric limits) are proposed, etc. Additionally, various requirements within Options 1 and 2 are infeasible and improper as they exceed the Central Coast Water Board’s regulatory authority. (See Farm Bureau and various agricultural entities’ (“Ag Coalition’s”) legal responses submitted on January 21, 2019.) Thus, Option 1 and Option 2 do not represent a range of alternatives to the project as required by CEQA, do not represent feasible alternatives, and are merely minor variants of one another rather. (See CEQA Guidelines, § 15126.6(a); Pub. Resources Code, § 21061.1; Cal. Code Regs., tit. 14, § 15364.) As currently presented in the Requirements Options Table and accompanying discussion within the Notice and November 8-9, 2018 staff report, the “project” appears to be predetermined in regulatory scope which would run afoul of CEQA: “The full consideration of environmental effects CEQA mandates must not be reduced “to a process whose result will be largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined.”” (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 135–136, citing *Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271, internal citations omitted.) Farm Bureau requests that the forthcoming EIR remedy these errors and include a proper project description, proper project objectives, proper treatment of the agricultural environment, and a reasonable range of feasible alternatives.

Thank you for the opportunity to provide our comments. We look forward to further involvement and discussion with the Water Board on the development of Ag Order 4.0.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kari Fisher", written in a cursive style.

KARI E. FISHER
Senior Counsel